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The United States Automobile Association

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

THE UNITED STATES AUTOMOBILE
ASSOCIATION,
Plaintiff,

v.

STEVEN BIAKANJA, THE ESTATE OF
LISA BIAKANJA, by the through its co-
administrators, KENNETH M. MCINTIRE
and JOAN MCINTIRE; KENNETH M.
MCINTIRE, individually, and on behalf of
all wrongful death beneficiaries of Lisa
Biakanja, Deceased; JOAN MCINTIRE, ,
individually, and on behalf of all wrongful
death beneficiaries of Lisa Biakanja,
Deceased; and CALIFORNIA
DEPARTMENT OF TRANSPORTATION,
a California public entity,

Defendants.

**COMPLAINT FOR DECLARATORY
JUDGMENT**

The United States Automobile Association (“USAA”), by and through undersigned
counsel, brings this complaint seeking a declaration of the parties’ rights and obligations
under a contract of insurance and states as follows:

NATURE OF THE SUIT

1
2 1. This is a declaratory judgment action brought pursuant to 28 U.S.C. § 2201
3 and 28 U.S.C. § 1332.

4 2. An actual and justiciable controversy exists between USAA and (a) the Estate
5 of Lisa Biakanja (the “Estate”) and (b) Steven Biakanja. This action will resolve a dispute
6 as to whether a policy of insurance issued by USAA to Lisa Biakanja, now deceased,
7 obligates USAA to defend or indemnify the Estate in connection with a creditor’s claim
8 filed by Steven Biakanja against the Estate in a probate action pending in the Superior
9 Court of California, County of Monterey, Case No. 22PR000599 (the “Creditor’s Claim”).

10 3. An actual and justiciable controversy also exists between USAA and (a) the
11 Estate and (b) the California Department of Transportation (“CalTran”). This action will
12 resolve a dispute as to whether a policy of insurance issue by USAA to Lisa Biakanja, now
13 deceased, obligates USAA to defend or indemnify the Estate in connection with affirmative
14 defenses and a cross-complaint filed by CalTran against the Estate in a civil action pending
15 in the Superior Court of California, County of San Benito, Case No. CU2300165 (the
16 “Estate’s Civil Action”).

17 **JURISDICTION AND THE PARTIES**

18 4. USAA is a corporation incorporated under the laws of Texas with its principal
19 place of business located in San Antonio, Texas. USAA is a citizen of Texas.

20 5. Upon information and belief, Lisa Biakanja at all relevant times was a resident
21 citizen of the County of Monterey, California. The Estate is consequently domiciled within
22 the County of Monterey, California.

23 6. The Estate’s co-administrators Kenneth M. McIntire and Joan McIntire are
24 named in the capacities as co-administrators of the Estate. They may be necessary parties to
25 this declaratory judgment action.

26 7. Upon information and belief, Steven Biakanja is, and at all relevant times was,
27 a resident citizen of the County of Monterey, California.
28

1 8. As the creditor in the Creditor's Claim, Steven Biakanja may be a necessary
2 party to this declaratory judgment action and has been joined solely to be bound by the
3 outcome of this case. No specific relief is sought against him. In the event he stipulates and
4 agrees to be bound by the resolution of this case, USAA will seek to voluntarily dismiss
5 him from this action.

6 9. The Estate has sought defense and indemnification from USAA in relation to
7 the Creditor's Claim filed by Steven Biakanja.

8 10. In the Creditor's Claim, Steven Biakanja seeks damages he alleges resulted
9 from the deaths of his three minor children: Benjamin Biakanja, Leigh Biakanja, and Lucy
10 Biakanja ("the Children"). He seeks damages for (a) general damages; (b) economic
11 damages; (c) medical and related expenses; (d) interest upon any judgment entered; (e)
12 costs of suit; and (e) such further and additional relief as a trier of fact deems proper.

13 11. CalTran is a California public entity with its headquarters located in
14 Sacramento, California and operations throughout the State of California. The Estate's Civil
15 Action alleges that CalTran was operating within the County of San Benito at all times
16 relevant to the allegations in the Estate's Civil Action.

17 12. The Estate's Civil Action names as additional plaintiffs Kenneth M. McIntire
18 and Joan McIntire, both residents of San Benito County, California, individually, and on
19 behalf of all wrongful death beneficiaries of Lisa Biakanja, Deceased. Kenneth M. McIntire
20 and Joan McIntire, in these capacities, may be necessary parties to this declaratory
21 judgment action and have been joined to be bound by the outcome of this case. No specific
22 relief is sought against Kenneth M. McIntire and Joan McIntire in individual and wrongful
23 death beneficiary capacities. In the event Kenneth M. McIntire and Joan McIntire stipulate
24 and agree to be bound by the resolution of this case, USAA will seek to voluntarily dismiss
25 Kenneth M. McIntire and Joan McIntire in their individual and wrongful death beneficiary
26 capacities from this action.

27 13. As the defendant in the Estate's Civil Action, CalTran may be a necessary
28 party to this declaratory judgment action and has been joined solely to be bound by the

1 outcome of this case. No specific relief is sought against CalTran. In the event CalTran
2 stipulates and agrees to be bound by the resolution of this case, USAA will seek to
3 voluntarily dismiss CalTran from this action.

4 14. The Estate has sought defense from USAA in relation to the affirmative
5 defenses and a cross-complaint filed by CalTran in the Estate's Civil Action.

6 15. In the Estate's Civil Action, the Estate seeks various damages, including (1)
7 special and compensatory damages; (2) prejudgment interest; and (3) costs of suit incurred
8 in connection with the alleged wrongful death of Lisa Biakanja. CalTran seeks to apportion
9 liability damages, if any, among other parties that contributed to Lisa Biakanja's death.

10 16. The amount in controversy with respect to the defenses of the Estate in the
11 Creditor's Claim and against CalTran's claims, potential indemnification for the Creditor's
12 Claim and relief sought by the Estate in the Estate's Civil Action exceeds \$75,000.

13 17. Because there is complete diversity of the parties and the amount in
14 controversy exceeds \$75,000.00, jurisdiction exists under 28 U.S.C. § 1332.

15 18. Venue is appropriate in this District. The Creditor's Claim and the Estate's
16 Civil Action are pending in a California State court within this District and the incident
17 underlying the Creditor's Claim and the Estate's Civil Action took place within this
18 District.

19 **BACKGROUND**

20 **The Automobile Collision and Creditor's Claim**

21 19. On February 24, 2023, Steven Biakanja filed a creditor's claim ("the
22 Creditor's Claim") in the probate action of the Estate of Lisa Biakanja, Case No.
23 22PR000599, proceeding in the Superior Court of California, County of Monterey. A true
24 and correct copy of the Creditor's Claim is attached as **Exhibit A**.

25 20. The Creditor's Claim seeks damages allegedly resulting from an automobile
26 collision on August 14, 2022.

1 21. The Creditor's Claim alleges that Steven Biakanja and Lisa Biakanja were the
2 parents of three children: 12 year-old Benjamin Biakanja, 14 year-old Leigh Biakanja, and
3 14 year-old Lucy Biakanja.

4 22. The Creditor's Claim alleges that Lisa Biakanja was driving an automobile in
5 San Benito County when she caused a head-on collision with a commercial vehicle.

6 23. The Creditor's Claim alleges Lisa Biakanja "so negligently, recklessly,
7 willfully, and/or unlawfully operated her vehicle so as to cause a head-on collision with an
8 oncoming eighteen-wheeler tractor trailer" Ex. A.

9 24. The Creditor's Claim also alleges that Lisa Biakanja "so negligently,
10 wrongfully, recklessly, willfully, and/or unlawfully owned, operated, and/or maintained her
11 vehicle so as to cause a head-on collision" Ex. A ¶ 5.

12 25. More specifically, Steven Biakanja alleges that Lisa violated California
13 Vehicle Code §§ 22107 and 21460(a) by "driving a vehicle to the left of the double parallel
14 solid yellow lines when such a movement could not be made with reasonable safety and
15 without giving the appropriate signal when other vehicles may have been affected by the
16 movement." Ex. A ¶ 3.

17 26. The Creditor's Claim alleges that, as a result of this collision, Lisa Biakanja
18 and the Children died.

19 27. The Creditor's Claim alleges that the deaths of the Children were the result of
20 Lisa Biakanja's "negligent, wrongful, reckless, outrageous, and/or unlawful conduct"
21 Ex. A ¶ 6.

22 28. The Creditor's Claim alleges that, at the time of the automobile collision,
23 Steven Biakanja and Lisa Biakanja were unmarried.

24 29. The Creditor's Claim alleges that, as a result of the collision, Steven Biakanja
25 "has suffered and continues to experience the loss of BENJAMIN, LEIGH, and LUCY'S
26 love, companionship, comfort, care, assistance, protection, affection, society, and moral
27 support." Ex. A ¶ 6.

1 30. The Creditor's Claim alleges that "as further direct and legal result of
2 BENJAMIN, LEIGH, and LUCY'S deaths, STEVEN has incurred funeral and burial
3 expenses, and related medical expenses, in an amount to be determined at trial." Ex. A ¶ 7.

4 31. Through his Creditor's Claim, Steven Biakanja seeks: (1) general damages; (b)
5 economic losses; (c) medical and related expenses; (d) interest upon any judgment entered
6 as provided by law; (e) all costs of suit; and (f) such further and additional relief as a trier of
7 fact deems proper.

8 32. USAA is defending the Estate in the Creditor's Claim under a reservation of
9 rights.

10 33. USAA reserved the right to deny coverage based on the insuring language,
11 exclusions, definitions, endorsements, or conditions contained in the Policy or under the
12 law.

13 34. USAA reserved the right to commence and prosecute any legal action
14 including but not limited to a declaratory relief action to obtain a judicial determination of
15 whether the Policy affords coverage for any of the claims set forth in the Creditor's Claim
16 and of USAA's obligation, if any, to provide a defense to the Creditor's Claim.

17 35. USAA reserved the right to seek reimbursement for any amounts expended by
18 USAA in defending the Estate in connection with the Creditor's Claim which are
19 determined to be not covered by the Policy.

20 **Steven and Lisa's Divorce and the Parenting Order**

21 36. On February 16, 2016, Steven and Lisa Biakanja filed for dissolution of
22 marriage in the lawsuit *Matter of Steve Biakanja and Lisa Biakanja*, Case No. 16FL000278,
23 Superior Court of California, County of Monterey.

24 37. On February 6, 2018, the court entered a stipulation by the parties that Brenda
25 D. Murdock was appointed as Parenting Coordinator empowered to make parenting
26 decisions that are effective when made and will continue in effect unless modified or set
27 aside by a court of competent jurisdiction.
28

1 38. A Parenting Order was entered regarding the parenting schedule of the
2 Children. A true and correct copy of the Parenting Order is included in **Exhibit B**.

3 39. The Parenting Order sets two parenting plans: one for the school year and one
4 for the summer.

5 40. According to the school year plan, the Children would live with Steven
6 Biakanja for three days out of seven for half of the weeks, and two days out of seven for the
7 other half of the weeks. Ex. B. ¶ 4. This calculates to the Children living with Steven
8 Biakanja for approximately 36% of the time and living with Lisa Biakanja approximately
9 64% of the time.

10 41. According to the summer plan, the Children would live with Steven Biakanja
11 for half the time and would live with Lisa Biakanja for half of the time.

12 **The Estate's Civil Action and CalTran's Response**

13 42. On August 8, 2023, the Estate filed the Estate's Civil Action, styled as *Estate*
14 *of Lisa Biakanja, by and through its co-administrator, Kenneth M. McIntire; and Joan*
15 *McIntire and Kenneth M. McIntire, individually, and on behalf of all wrongful death*
16 *beneficiaries of Lisa Biakanja, Deceased v. The State of California Department of*
17 *Transportation, a public entity, and Does 1 to 25, inclusive*, Case No. CU2300165, pending
18 in Superior Court for the State of California, County of San Benito. A true and correct copy
19 of the complaint filed in the Estate's Civil Action is attached as part of **Exhibit C**.

20 43. On or about September 12, 2023, CalTran filed its answer and affirmative
21 defenses in the Estate's Civil Action, including its Third Affirmative Defense, which
22 asserted contributory negligence and apportionment against, *inter alia*, plaintiff and others,
23 named or unnamed in the Estate's Civil Action. A true and correct copy of CalTran's
24 Answer to Complaint filed in the Estate's Civil Action is attached as part of **Exhibit C**.

25 44. Also on or about September 12, 2023, CalTran filed its cross-complaint in the
26 Estate's Civil Action, styled as *California Department of Transportation v. Does 1 to 50*
27 (the "Cross-Complaint"). A true and correct copy of CalTran's Cross-Complaint filed in the
28 Estate's Civil Action is attached as part of **Exhibit C**.

45. The Cross-Complaint alleges that if CalTran is found liable in the Estate's Civil Action, then CalTran should be granted apportionment and contribution from any other party at fault in the death of Lisa Biakanja.

46. The Estate sought from USAA a defense under the Auto Policy against CalTran's Cross-Complaint.

47. On October 20, 2023, USAA denied the Estate's because the Auto Policy did not respond to the affirmative defenses or the Cross-Complaint.

48. USAA reserved the right to assert any coverage defenses available to it under the Auto Policy and at law in response to the Estate's request, as well as any term, limitation, exclusions, condition or agreement in the Auto Policy.

49. USAA reserved the right commence a declaratory judgment action as to USAA's obligations under the Auto Policy as to the Estate's tender of CalTran's claims.

POLICY ISSUED BY USAA TO LISA BIAKANJA

50. USAA issued policy no. 027490095R71010 to Lisa Biakanja for the period from March 1, 2022 to March September 1, 2022 (the "Auto Policy"). A true and correct copy of the Auto Policy is attached as **Exhibit D**.

51. The Named Insured on the Auto Policy is Lisa Biakanja.

52. The Auto Policy provides automobile liability coverage under PART A, for which the insuring agreement states the following, quoted in part:

INSURING AGREEMENT

*We will pay compensatory damages for **BI** or **PD** for which any covered person becomes legally liable because of an auto accident. We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. Our duty to settle or defend ends when **our** limit of liability for these coverages has been paid or tendered. We have no duty to defend any suit or settle any claim for **BI** or **PD** not covered under this policy.*

(Form 5100CA(02) Rev. 08-16 at p. 5 of 30).

53. Part A's coverage is subject to the following exclusion, among others:

EXCLUSIONS

A. *We do not provide Liability Coverage for any **covered person**:*

* * *

*13. For **BI** to **you** or any **family member**, nor do we provide coverage for any **covered person** for **BI** to **you** or any **family member** whenever the ultimate benefits of that indemnification accrue directly or indirectly to **any covered person**.*

(Form 5100CA(02) Rev. 08-16 at pp. 6-7 of 30).

54. The Auto Policy defines the terms in boldface as follows:

A. ***“You”** and **“your”** refer to the “named insured” shown on the Declarations and spouse or registered domestic partner if a resident of the same household.*

B. ***“We,” “us,”** and **“our”** refer to the Company providing this insurance.*

* * *

D. ***“Bodily injury”** (referred to as **BI**).*

1. ***“Bodily injury”** means bodily harm, sickness, disease or death.*

2. ***“Bodily injury”** does not include mental injuries such as emotional distress, mental anguish, humiliation, mental distress, or any similar injury unless it arises out of physical injury to some person.*

* * *

F. ***“Family member”** means a person related to **you** by blood, marriage, registered domestic partnership under California law, or adoption who resides primarily in **your** household. This includes a ward or foster child.*

* * *

L. ***“Property damage”** (referred to as **PD**)*

1. ***“Property damage”**, except as modified in Part C, means physical injury to, destruction of, or loss of use of tangible property.*

2. *For purposes of this policy, electronic data is not tangible property. Electronic data means information, facts or programs:*

a. *Stored as or on;*

b. *Created or used on; or*

c. *Transmitted to or from;*

computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

* * *

O. “**Your covered auto**” means:

1. Any vehicle shown on the Declarations.
2. Any **newly acquired vehicle**.
3. Any **trailer you own**.

(Form 5100CA(02) Rev. 08-16 at pp. 3-4 of 30).

55. Part A of the Auto Policy contains the following definition of “covered person”:

“**Covered person**” as used in this Part means:

1. **You** or any **family member** for the ownership, maintenance or use of any auto or **trailer**.
2. Any person using **your covered auto**.
3. Any other person or organization, but only with respect to legal liability imposed on them for the acts or omissions of a person for whom coverage is afforded in 1. or 2. above. With respect to an auto or **trailer** other than **your covered auto**, this provision only applies if the other person or organization does not own or hire the auto or **trailer**.

(Form 5100CA(02) Rev. 08-16 at pp. 4-5 of 30).

COUNT I

NO COVERAGE OWED TO THE ESTATE AS TO THE CREDITOR’S CLAIM BECAUSE OF THE FAMILY MEMBER EXCLUSION

56. USAA repeats and realleges the allegations in Paragraphs 1 through 55 as if fully set forth herein.

57. The Creditor’s Claim alleges damages arising out of the Children’s death in an automobile collision.

58. The Auto Policy’s Family Member Exclusion bars coverage for “bodily injury” to “family members” of the named insured (i.e., Lisa Biakanja).

59. At the time of the automobile collision, the Children primarily resided in Lisa Biakanja's household.

60. The Children were Lisa Biakanja’s “family members” within the Policy’s definition of the term.

61. The Creditor's Claim seeks damages for "bodily injury" to "family members" of Lisa Biakanja, the Auto Policy's "named insured".

62. Because the Creditor’s Claim seeks damages for “bodily injury” to “family members” of the Auto Policy’s Named Insured, the Auto Policy’s Family Member Exclusion bars coverage for the Creditor’s Claim.

63. Furthermore, the Family Member Exclusion also bars coverage for any “covered person” for “bodily injury” to any “family member” when the ultimate benefits of that indemnification accrue directly or indirectly to any “covered person.”

64. An indemnification of the Creditor's Claim would ultimately benefit the Estate of Lisa Biakanja.

65. The Estate of Lisa Biakanja is a “covered person” under the Auto Policy’s definition.

66. Therefore, an indemnification of the Creditor's Claim would ultimately benefit a "covered person."

67. Because the Creditor’s Claim seeks damages for “bodily injury” to a “family member” when the ultimate benefits of that indemnification accrue directly or indirectly a “covered person,” the Auto Policy’s Family Member Exclusion bars coverage for the Creditor’s Claim.

COUNT II

**NO COVERAGE OWED TO THE ESTATE AS TO CALTRAN'S
AFFIRMATIVE DEFENSES AND CROSS-COMPLAINT BECAUSE THEY DO
NOT SATISFY THE AUTO POLICY'S INSURING AGREEMENT**

68. USAA repeats and realleges the allegations in Paragraphs 1 through 55 as if fully set forth herein.

1 (2) USAA has no duty to indemnify The Estate in relation to the Creditor's Claim
2 or any other claims resulting from the automobile collision underlying the Creditor's
3 Claim;

4 (3) Grant any other relief as may be available under the Policy, at law or in equity.

5 DATED: October 31, 2023

LITCHFIELD CAVO LLP

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